



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XB934]

Identification of Nations or Entities Engaged in Illegal, Unreported, or Unregulated Fishing, Bycatch of Protected Living Marine Resources, or Shark Fishing on the High Seas

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; request for information.

SUMMARY: NMFS is seeking information regarding nations or entities whose vessels are engaged in illegal, unreported, or unregulated (IUU) fishing; fishing practices that result in the bycatch of protected living marine resources (PLMRs) without a regulatory program comparable in effectiveness to that of the United States; and/or fishing activities in waters beyond any national jurisdiction that target or incidentally catch sharks without a regulatory program comparable to that of the United States. Such information will be reviewed for the purposes of the identification of nations or entities pursuant to the High Seas Driftnet Fishing Moratorium Protection Act (Moratorium Protection Act).

DATES: Information should be received on or before December 31, 2022. However, we encourage submission of information as early as possible.

ADDRESSES: Information may be submitted either by mail to: NMFS Office of International Affairs, Trade, and Commerce, Attn.: Moratorium Protection Act Information, F/IATC 1315 East-West Highway, Silver Spring, MD 20910, or electronically to: IUU.PLMR.Sharks@noaa.gov.

FOR FURTHER INFORMATION CONTACT: Ellie Bors, phone (240) 429-4461, or email eleanor.bors@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

The Moratorium Protection Act requires the Secretary of Commerce (Secretary) to issue a Biennial Report to Congress that identifies nations and entities whose vessels are engaged in IUU fishing, bycatch of PLMRs, and/or fishing activities in waters beyond any national jurisdiction that target or incidentally catch sharks, in specific circumstances elaborated below. NMFS is soliciting information from the public regarding fishing activities by foreign fishing vessels in 2020, 2021, and/or 2022 that may support identification of those nations and entities in the Biennial Report.

The Shark Conservation Act of 2010 (Pub. L. 111-348) amended the Moratorium Protection Act by requiring action by the United States to strengthen shark conservation globally, including the potential identification of nations and entities with vessels fishing for sharks on the high seas (16 U.S.C. 1826k(a)(2)). In November 2015, the Illegal, Unreported, and Unregulated Fishing Enforcement Act of 2015 (Pub. L. 114-81) further amended the Moratorium Protection Act by, among other things, expanding the scope of information that can be used for the identification of nations and entities to three years for the IUU fishing and bycatch provisions (see 16 U.S.C. 1826j-1826k). In December 2016, the Ensuring Access to Pacific Fisheries Act (Pub. L. 114-327) amended the Moratorium Protection Act by also expanding the scope of information that can be used for the identification of nations and entities to three years for the shark provisions (see 16 U.S.C. 1826k).

The seventh biennial report to Congress was submitted in August 2021 and is available online at: <https://media.fisheries.noaa.gov/2021-08/2021ReporttoCongressonImprovingInternationalFisheriesManagement.pdf>. The report identified seven nations and entities for IUU fishing and 29 nations and entities for

the bycatch of PLMRs without a regulatory program comparable in effectiveness to that of the United States.

In fulfillment of its requirements under the Moratorium Protection Act, NMFS is preparing the eighth biennial report to Congress, and will consider whether information exists to support the identification of nations or entities whose vessels are engaged in IUU fishing; fishing practices that result in bycatch of PLMRs without a regulatory program comparable in effectiveness to that of the United States; and/or fishing activities in waters beyond any national jurisdiction that target or incidentally catch sharks without a regulatory program comparable to that of the United States.

IUU Fishing

The Moratorium Protection Act requires the Secretary to identify in a biennial report to Congress those nations and entities whose fishing vessels are engaged, or have been engaged at any point during the preceding three years, in IUU fishing. The definition of IUU fishing can be found at 50 CFR 300.201 and includes:

(1) Fishing activities that violate conservation and management measures required under an international fishery management agreement to which the United States is a party, including catch limits or quotas, capacity restrictions, bycatch reduction requirements, shark conservation measures, and data reporting;

(2) In the case of non-parties to an international fishery management agreement to which the United States is a party, fishing activities that would undermine the conservation of the resources managed under that agreement;

(3) Overfishing of fish stocks shared by the United States, for which there are no applicable international conservation or management measures or in areas with no applicable international fishery management organization or agreement, that has adverse impacts on such stocks;

(4) Fishing activity that has an adverse impact on vulnerable marine ecosystems such as seamounts, hydrothermal vents, cold water corals and other vulnerable marine ecosystems located beyond any national jurisdiction, for which there are no applicable conservation or management measures or in areas with no applicable international fishery management organization or agreement; and

(5) Fishing activities by foreign-flagged vessels in U.S. waters without authorization of the United States.

PLMR Bycatch

In addition, the Secretary must identify in the biennial report those nations and entities whose fishing vessels are engaged, or have been engaged at any point during the preceding three years in fishing activities in waters beyond any national jurisdiction that result in bycatch of a PLMR, or beyond the U.S. exclusive economic zone (EEZ) that result in bycatch of a PLMR shared by the United States, and that have not implemented measures to address that bycatch that are comparable in effectiveness to U.S. regulatory requirements. In this context, PLMRs are defined as non-target fish (including sharks), sea turtles, or marine mammals that are protected under U.S. law or international agreement, including the Marine Mammal Protection Act, the Endangered Species Act, the Shark Finning Prohibition Act, and the Convention on International Trade in Endangered Species of Wild Flora and Fauna. PLMRs do not include species, except sharks, managed under the Magnuson-Stevens Fishery Conservation and Management Act, the Atlantic Tunas Convention Act, or any international fishery management agreement. A list of species considered as PLMRs for the purposes of identification under the Moratorium Protection Act is available online at:

https://media.fisheries.noaa.gov/dam-migration/plmr_list_2019.pdf.

Shark Catch in Waters Beyond Any National Jurisdiction

Furthermore, the Moratorium Protection Act requires that the Secretary identify nations and entities in the biennial report to Congress whose fishing vessels are engaged, or have been engaged during the preceding three years in fishing activities or practices in waters beyond any national jurisdiction that target or incidentally catch sharks and when the nation has not adopted a regulatory program to provide for the conservation of sharks, including measures to prohibit removal of any of the fins of a shark (including the tail) and discarding the carcass of the shark at sea, that is comparable to that of the United States, taking into account different conditions. When determining whether to identify nations or entities for these activities, NMFS will take into account all relevant matters including, but not limited to, the history, nature, circumstances, duration, and gravity of the fishing activity of concern.

Information Solicited

NMFS is soliciting information from the public that could be relevant to the identification of nations and entities engaged in activities that meet the criteria described above for IUU fishing, PLMR bycatch, or shark catch in waters beyond any national jurisdiction. Some types of information that may prove relevant to the process include:

- Documentation (photographs, verifiable catch data, *etc.*) of IUU fishing activity, fishing vessels engaged in PLMR bycatch, or catch of sharks on the high seas;
- Documentation (photographs, *etc.*) of fishing vessels engaged in bycatch of shared PLMRs in any waters beyond the U.S. EEZ;
- Documentation (photos, video, witness testimony, publicly available data, *etc.*) of illegal shark fishing in contravention of shark conservation and management measures adopted by Regional Fisheries Management Organizations (RFMOs) to which the United States is a Party (shark finning without full utilization of the carcass, non-reporting of shark catch, retention of prohibited shark species, *etc.*);

- Reports from off-loading facilities, port-side government officials, enforcement agents, military personnel, port inspectors, transshipment vessel workers and fish importers;
- Sightings of vessels included on RFMO IUU vessel lists;
- RFMO catch documents and statistical document programs;
- Nations' domestic regulations for bycatch and shark conservation and management, including any regulations that prohibit the removal of any of the fins of a shark (including the tail) and discarding the carcass of the shark at sea;
- Action or inaction at the national level, resulting in non-compliance with RFMO conservation and management measures, such as exceeding quotas or catch limits, or failing to report or misreporting data of the nation's fishing activities; and
- Relevant reports from governments, international organizations, or nongovernmental organizations.

NMFS will consider all available information, as appropriate, when making a determination whether or not to identify a particular nation or entity in the biennial report to Congress. As stated previously, NMFS is limited in the time frame for data it may use as the basis of a nation's identification. Appropriate information includes IUU fishing activity, bycatch of PLMRs, and shark fishing activity in waters beyond any national jurisdiction that occurred in 2020, 2021, and 2022. Information should be as specific as possible as this will assist NMFS in its review. NMFS will consider several criteria when determining whether information is appropriate for use in making identifications, including but not limited to:

- Corroboration of information;
- Whether multiple sources have been able to provide information in support of an identification;
- The methodology used to collect the information;

- Specificity of the information provided;
- Susceptibility of the information to falsification and alteration;
- Credibility of the individuals or organization providing the information; and
- Ability to share the provided information with a nation or entity in the event that it is identified, so that the nation can take specific corrective actions.

More information regarding the identification process and how the information received will be used in that process can be found at 16 U.S.C. 1826j-1826k and in the regulations codified at 50 CFR 300.200 *et seq.* Note that the timeframe for activities to be considered for IUU fishing, bycatch, and shark identifications has not yet been changed in the implementing regulations to reflect the amendments in the Illegal, Unreported, and Unregulated Fishing Enforcement Act of 2015 and the Ensuring Access to Pacific Fisheries Act of 2016, which extend the timeframe to three years in each case. Such conforming amendments to the implementing regulations are under development.

Dated: April 8, 2022.

Alexa Cole,

Director, Office of International Affairs, Trade, and Commerce,

National Marine Fisheries Service.